



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

We strive to be caring, professional and fair

To: Monroe County Planning Commission

Through: Townsley Schwab, Senior Director of Planning & Environmental Resources *TS*

From: Joseph Haberman, Principal Planner *JH*

Date: May 27, 2009

Subject: *Request for a Time Extension to a Minor Conditional Use Permit, approved under Development Order No. 02-07, Flager's Village, LLC, 5302 MacDonald Avenue, Stock Island, Mile Marker 5*

Meeting: June 10, 2009

I REQUEST:

The applicant is requesting a one (1) year extension to D.O. 02-07 (see attached).



Subject Property (outlined in blue) (2006)

Location:

Address: 5302 MacDonald Avenue, Stock Island, mile marker 5 (oceanside)

Legal Description: Lots 1-20, Square 38, Maloney Subdivision (PB1-55), Stock Island

Real Estate (RE) Numbers: 00125350.000000 & 00125360.000100

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Reviewed by *JH*

1
2 Applicant:

3
4 Owner: Monroe County

5
6 Lessee/Developer: Overseas Redevelopment Company, LLC

7
8 Agent: Timothy J. Koenig
9

10 II RELEVANT PRIOR COUNTY ACTIONS:
11

12 On March 17, 2005, the Director of Planning & Environmental Resources issued a letter of
13 understanding stating that 56 residential units were lawfully established on the property,
14 thereby providing for 56 exemptions from the Rate of Growth Ordinance (ROGO) permit
15 allocation system.
16

17 On April 20, 2005, the Board of County Commissioners passed and adopted Ordinance 006-
18 2005, which amended the property's land use district designation from Urban Residential
19 Mobile Home – Limited (URM-L) to Urban Residential (UR).
20

21 On May 3, 2006 (effective August 9, 2006), the Florida Department of Community Affairs
22 (DCA), Overseas Redevelopment Company, LLC and Monroe County entered into a
23 development agreement in accordance with §380.032(3), Florida Statutes (see attached). The
24 agreement provided the property owner with the right to construct a workforce housing
25 community of 49 deed-restricted affordable housing units. Per the agreement, the County
26 amended the lawful determination to provide for 63 market-rate ROGO exemptions, the
27 County agreed to allocate 18 affordable ROGO allocations from its inventory for the project,
28 Overseas Redevelopment Company agreed to provide 31 of its market-rate ROGO
29 exemptions for the project (however, the agreement allows for the County to substitute 31 of
30 its affordable ROGO allocations for the 31 market-rate ROGO exemptions), and the County
31 and DCA agreed to allow the remaining 32 market-rate ROGO exemptions retained by
32 Overseas Redevelopment Company to be transferred off-site as market-rate units (with
33 restrictions). In addition, pursuant to the agreement, the County agreed to purchase the
34 property and lease it back to Overseas Redevelopment Company for a term of 99-years.
35

36 D.O. 02-07 was reviewed by the Development Review Committee on March 6, 2007,
37 approved and signed by the Senior Director of Planning & Environmental Resources April
38 18, 2007 and recorded in the official records of the Monroe County Clerk on June 8, 2007.
39 D.O. 02-07, an amendment to a minor conditional use permit, approved the redevelopment of
40 the 63 market-rate unit mobile home park into the workforce housing community of 49 deed-
41 restricted affordable units. In addition, D.O. 02-07 established the 32 market-rate ROGO
42 exemptions as eligible for transfer off-site.
43

44 A minor deviation modifying the site plan to provide an emergency access drive on
45 MacDonald Drive was approved by the Senior Director of Planning & Environmental
46 Resources on January 23, 2008.
47

Since the June 8, 2007 recording of D.O. 02-07, the property owner has applied for and received 50 building permits, including a building permit for each of the 49 deed-restricted affordable housing units, in order to carry out the scope of work approved under the minor conditional use permit. However, not all of work under the issued building permits was carried out. The site remains under construction.

The following table organizes building permit applications (since June 8, 2007):

<i>Permit No.</i>	<i>Date Applied</i>	<i>Date Issued</i>	<i>Description</i>
071-3634	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#49)
071-3633	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#48)
071-3632	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#47)
071-3631	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#46)
071-3630	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#45)
071-3629	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#44)
071-3628	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#43)
071-3626	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#42)
071-3624	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#41)
071-3622	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#40)
071-3621	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#28)
071-3620	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#27)
071-3619	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#26)
071-3618	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#25)
071-3617	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#24)
071-3616	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#23)
071-3615	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#22)
071-3614	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#21)
071-3613	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#20)
071-3612	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#19)
071-3611	08/20/2007	08/20/2007	Construct Affordable Housing Unit (#18)
071-3605	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#39)
071-3604	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#38)
071-3603	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#37)
071-3602	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#36)
071-3601	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#35)
071-3600	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#34)
071-3598	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#33)
071-3597	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#32)
071-3596	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#31)
071-3595	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#30)
071-3594	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#16)
071-3593	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#15)
071-3591	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#14)
071-3590	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#13)
071-3589	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#12)
071-3588	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#11)
071-3587	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#10)
071-3585	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#9)
071-3584	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#8)
071-3583	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#7)
071-3582	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#6)

071-3581	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#5)
071-3580	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#4)
071-3578	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#3)
071-3577	08/17/2007	08/17/2007	Construct Affordable Housing Unit (#2)
071-2805	06/28/2007	08/20/2007	Construct Affordable Housing Unit (#17)
071-2804	06/28/2007	08/17/2007	Construct Affordable Housing Unit (#1)
071-2803	06/28/2007	08/17/2007	Construct Affordable Housing Unit (#29)
071-2801	06/28/2007	08/17/2007	Site Work

III BACKGROUND INFORMATION:

- A. Size of Site: 154,810 ft² (3.5 acres)
- B. Land Use District: Urban Residential (UR)
- C. Future Land Use Map (FLUM) Designation: Residential High (RH)
- D. Tier Designation: Tier 3
- E. Existing Use: Multi-Family Residential (under construction)
- F. Existing Vegetation / Habitat: Developed with small area of mangrove
- G. Community Character of Immediate Vicinity: Mixed Use – Residential and Commercial

IV REVIEW OF APPLICATION:

Pursuant to MCC §110-73(a)(1), unless otherwise specified in the approved conditional use approval, application for a building permit(s) shall be made within six (6) months of the date of the approval of the conditional use, and all required certificates of occupancy shall be procured within two (2) years of the date of issuance of the initial building permit, or the conditional use approval shall become null and void with no further action required by the county. Approval time frames do not change with successive owners. An extension of time may be granted only by the Planning Commission for a period not to exceed one (1) year and only within the original period of validity. When a hearing officer has ordered a conditional use approval initially denied by the Planning Commission, the commission shall nonetheless have the authority to grant or deny a time extension.

D.O. 02-07 was recorded on June 8, 2007. An application for a building permit was required by December 8, 2007. The property owner applied for several building permits on June 28, 2007. The first building permits, not all of which were applied for on June 28, were issued on August 17, 2007.

The property owner has two (2) years to acquire all certificates of occupancy from the date of the initial building permit's issuance. Consequently, all required certificates of occupancy are required by August 17, 2009.

The applicant is requesting a one year extension. Staff has found that the request does not exceed one (1) year and D.O. 02-07 is within its original period of validity. Therefore, the required criteria have been met.

1 Regarding rationale for a time extension, the applicant asserts that unexpected delays in the
2 permitting and approval processes have led to an overall delay in the project's completion.
3 The specific issues leading to delays are outlined in the application. In addition, the
4 applicant asserts the project was commenced with construction funds provided by
5 conventional construction financing, which was conditioned on a certain number of presales
6 of units. However, when the economy took a downturn and the housing market was affected,
7 the presales fell apart and the construction funding stopped, which interfered with the
8 developer's ability to proceed under the development order.
9

10 Staff has determined that the property owner has exhibited progress in carrying out the
11 development. Permits to demolish existing structures have been issued and the work carried
12 out. Permits to construct new structures have been submitted; however work has stalled
13 presumably due to reasons provided by the applicant.
14

15 V RECOMMENDATION:
16

17 Staff recommends APPROVAL to the Planning Commission with the following conditions:
18

19 A. Development Order No. 02-07 is hereby extended for one (1) year, to provide a new
20 expiration date of August 17, 2010.

21 B. All other provisions and conditions of Development Order No. 02-07 shall be met.



**MONROE COUNTY, FLORIDA
AMENDMENT TO A MINOR CONDITIONAL USE
DEVELOPMENT ORDER # 02-07**

A DEVELOPMENT ORDER **APPROVING** THE REQUEST BY OVERSEAS REDEVELOPMENT COMPANY, LLC FOR AN AMENDMENT TO A MINOR CONDITIONAL USE FOR THE REDEVELOPMENT OF A SIXTY-THREE (63) UNIT MOBILE HOME PARK INTO FORTY-NINE (49) ATTACHED AND DETACHED AFFORDABLE UNITS AND TO ESTABLISH 32 MARKET RATE UNITS ELIGIBLE FOR TRANSFER. THE PROPERTY IS LEGALLY DESCRIBED AS LOTS 1-20, MALONEY SUBDIVISION, STOCK ISLAND, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS: 00125350.000000 AND 00125360.000100.

WHEREAS, during a regularly scheduled meeting held on March 6, 2007, the Development Review Committee (DRC) of Monroe County, Florida, conducted a review and consideration of the request by Overseas Redevelopment Company (ORC) LLC., for an amendment to a minor conditional use pursuant to Sections 9.5-24 and 9.6-68 of the Monroe County Code; and

WHEREAS, the subject property is located at 5302 MacDonald Ave, Stock Island, at approximate mile marker 5 and is legally described as Lots 1-20, Maloney Subdivision, Stock Island, Monroe County, Florida, having Real Estate Numbers: 00125350.000000 and 00125360.000100; and

WHEREAS, the Development Review Committee reviewed the following documents and other information relevant to the request:

1. Application for and amendment to a minor conditional use approval of (49) attached and detached employee housing units, which included all documents required; and
2. Staff Report prepared by Heaven Lashley, Monroe County Planner, and Ralph Gouldy Sr. Director of Planning and Environmental Resources dated February 23, 2007; and
3. Monroe County Property Record Card; and

4. Monroe County Land Use District Map and Monroe County Future Land Use Map; and
5. Conceptual Drainage Plan (C-1) by Perez Engineering & Development Inc, received February 14, 2007; and
6. Site Plan (S1) by Thomas E. Pope, PA, signed and sealed dated 7/8/06, revised 2/12/07; and
7. Sworn Testimony of the Growth Management Staff; and

WHEREAS, on May 3, 2006 Monroe County, the Department of Community Affairs (DCA), and ORC entered into an agreement pursuant to Section 380.023(3) of the Florida Statutes; and

WHEREAS, per this agreement, the parties agreed that ORC had 63 ROGO units allocated to the property; and

WHEREAS, per this agreement, ORC exchanged with Monroe County thirty one (31) market rate ROGO units for thirty one (31) affordable housing units; in addition Monroe County allocated eighteen (18) affordable ROGO units to redevelop the property into a 49 unit workforce housing community; and

WHEREAS, on July 19, 2006 the Monroe County Board of County Commissioners adopted Resolution Number 273-2006, granting the aforementioned forty nine (49) affordable ROGO allocations to ORC; and

WHEREAS, per the agreement, the remaining 32 market rate ROGO units retained by ORC shall be entitled for transfer at such time ORC has been issued a building permit for the redevelopment of the property; and

WHEREAS, the Applicant is seeking development approval to convert sixty-three (63) mobile home sites to forty-nine (49) attached and detached employee housing units, pursuant to the 380 agreement mentioned above; and

WHEREAS, the redevelopment proposal includes forty nine (49) attached and detached employee housing units, as well as the establishment of the subject property as a sender site for the transfer of thirty two (32) Transfer of ROGO Exemptions (TRES); and

WHEREAS, the property is located in an Urban Residential (UR) Land Use District and has a Future Land Use Map designation of Residential High (RH); and

WHEREAS, pursuant to Section 9.5-233 of the Monroe County Code, in the UR District, the redevelopment requires conditional use approval by the Monroe County Development Review Committee; and

WHEREAS, based upon the information and documentation submitted, the Development Review Committee found:

1. Section 9.5-65 of the Monroe County Code provides the standards which are applicable to all conditional uses. When considering applications for a conditional use permit, the Development Review Committee shall consider the extent to which:
 - (a) The conditional use is consistent with the purposes, goals, objectives and standards of the Monroe County Year 2010 Comprehensive Plan and Monroe County Code; and
 - (b) The conditional use is consistent with the community character of the immediate vicinity of the parcel proposed for development; and
 - (c) The design of the proposed development minimizes adverse effects, including visual impacts, or the proposed use on adjacent properties; and
 - (d) The proposed use will have an adverse effect on the value of surrounding properties; and
 - (e) The adequacy of public facilities and services, including but not limited to roadways, park facilities, police and fire protection, hospital and Medicare services, disaster preparedness program, drainage systems, refuse disposal, water and sewers, judged according to standards from and specifically modified by the public facilities capital improvements adopted in the annual report required by the Monroe County Code; and
 - (f) The Applicant for conditional use approval has the financial and technical capacity to complete the development as proposed and has made adequate legal provision to guarantee the provision and development of any open space and other improvements associated with the proposed development; and
 - (g) The development will adversely affect a known archaeological, historical or cultural resource; and
 - (h) Public access to public beaches and other waterfront areas is preserved as a part of the proposed development; and
 - (i) The proposed use complies with all additional standards imposed on it by the particular provision of this chapter authorizing such use and by all other applicable requirements of the Monroe County Code; and
2. Staff found that the Applicant has demonstrated that all of the required standards shall be met and recommended approval of the amendment to a minor conditional use application with conditions; and
3. The Monroe County Development Review Committee found that the Applicant has demonstrated that all of the required standards shall be met; and

WHEREAS, the Development Review Committee recommended approval with conditions of the application to the Director of Planning & Environmental Resources; and

WHEREAS, the Director of Planning & Environmental Resources has duly considered the recommendation of the Development Review Committee and the information and documentation submitted by the Applicant; and

WHEREAS, the applicant submitted a revised final site plan (ST1) on 4/13/07 by Thomas E. Pope, PA, signed and sealed dated 3/6/07; and

WHEREAS, the applicant submitted a final Landscape Plan (L1) on 4/13/07 by Thomas E. Pope, PA, signed and sealed dated 3/6/07; and

WHEREAS, the record established, the testimonies offered, and the evidence submitted, support the findings of fact adopted by the Development Review Committee; and

NOW THEREFORE, BE IT RESOLVED BY THE DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES OF MONROE COUNTY, FLORIDA that the request by Overseas Redevelopment Company, LLC. for an amendment to a minor conditional use permit to redevelop the existing mobile home park by constructing forty nine (49) attached and detached employee housing units, as well as the establishment of the subject property as a sender site for thirty two (32) Transfer of ROGO Exemptions (TREs), at property legally described as Lots 1-20, Maloney Subdivision, Stock Island, Monroe County, Florida, having Real Estate Numbers 00125350.000000 & 00125360.000100, is hereby **APPROVED** with the following conditions:

1. Prior to a certificate of occupancy, permanent structures shall be placed at least ten (10) feet from any other permanent structure; and
2. Prior to a certificate of occupancy, no structures shall be permitted in the required buffer yards and set backs; and
3. Prior to the issuance of a building permit, a letter of coordination from Key West Resort Utilities (KWRU) shall be received indicating that the site in question does at this time have the capacity to treat sewage generated at this site; and
4. Prior to the issuance of a building permit, a letter of coordination and approval for either a General Environmental Resource Permit, or a notice of "no permit required" given for the proposed development shall be received from the South Florida Water Management District; and
5. Prior to the issuance of a building permit, approval from the Monroe County Fire Marshall shall be received by the building department; and
6. The 32 sender units shall be assigned the following unique identifier numbers; **A-0267 through A-0298**, to be used for tracking and monitoring by the Planning & Environmental Resources Department; and
7. The 32 sender units may not be transferred beyond the Lower Keys District boundaries unless and until the nutrient credit reduction system is officially dispensed as a result of official state action or judicial decree; and
8. The 32 sender units may not be transferred to a Tier I zoning district; or a special protection area requiring the clearing of natural habitat; or to a site if evaluated under ROGO would receive negative points under habitat protection, threatened or endangered species, or critical habitat;

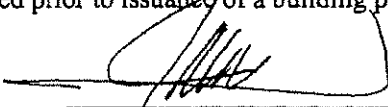
9. The 32 sender units shall not be eligible for transfer until ORC has been issued a building permit for the redevelopment of the property; and
10. Prior to a certificate of occupancy, ORC shall comply in all respects with the definition of "affordable housing" and "employee housing" in the Monroe County Code and shall additionally require each unit purchaser or occupant to be a member of the Monroe County workforce, i.e. to be gainfully employed, full time in Monroe County at the time of purchase or occupancy and to remain so employed for not less than five (5) years thereafter.

WHEREAS, condition three (3) has been partially satisfied by submittal of a letter of coordination from Key West Resort Utilities (KWRU) dated October 4, 2006 indicating that the site in question does at this time have the capacity to treat sewage generated from forty-three (43) residential units. The letter indicates that KWRU will guarantee the capacity for a period of one (1) year from the date of the letter. Additional coordination shall be conducted to demonstrate capacity for the remaining six (6) units once those are ready to be constructed on the property; and

WHEREAS, condition four (4) has been partially satisfied by submittal of a letter of coordination from the South Florida Water Management District dated November 8, 2006 indicating that the project will require a General Environmental Resource Permit, this permit shall be allocated prior to building permit approval, or a letter from the South Florida Water Management District stating that a notice of "no permit required" is given for the proposed development; and

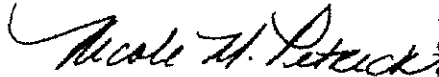
WHEREAS, condition five (5) has been partially satisfied by submittal of a letter of coordination from the Monroe County Fire Marshal dated July 18, 2005 stating that fire protection plans indicating improvements to water supply via fire hydrant, for plan review, shall be submitted prior to issuance of a building permit; and

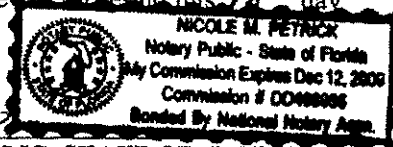
Date 4/18/07


Aref Joulani,
Senior Director of Planning & Environmental Resources

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State aforesaid and in the County aforesaid, to take acknowledgments, personally appeared Aref Joulani, to me known to be the person described in and who executed the foregoing instrument and she acknowledged before me the she executed the same.

WITNESS my hand and official seal in the County and State aforesaid this 18th day of April, 2007.





NOTARY PUBLIC, STATE OF FLORIDA

REFERENCE: In the event that this development order constitutes an amendment, extension, variation, or alteration of a previous conditional use permit, that document may be referenced by the following: Deemer Clause 9.5-2 (c).

NOTICE

Section 9.5-72(a)(1) of the Monroe County Code states that a conditional use permit shall not be transferred to a successive owner without notification to the Development Review Coordinator within five (5) days of the transfer.

Under the authority of Section 9.5-72(a) of the Monroe County Code, this development order shall become null and void with no further notice required by the County, unless a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the Monroe County Building Official within six (6) months of the expiration of the Florida Department of Community Affairs appeal period or the date when the Florida Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with two (2) years of the date of this development order is approved by the Director of Planning & Environmental Resources.

If this development order is appealed under Monroe County code or by the Florida Department of Community Affairs, the above time limits shall be tolled until the appeals are resolved.

This instrument shall not take effect for thirty (30) working days following the date of memorialization thereof, and during that time permit shall be subject to appeal as provided in Section 9.5-521(d) of the Monroe County Code. An appeal shall stay the effectiveness of this instrument until resolved.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition of the Florida Department of Community Affairs. During those forty-five days, the Florida Department of Community Affairs may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

MONROE COUNTY
OFFICIAL RECORDS

AGREEMENT
Pursuant to Section 380.032(3), Florida Statutes

THIS SECTION 380.032 AGREEMENT is entered into between the **Department of Community Affairs**, an agency of the State of Florida (hereinafter referred to as "DCA" or Department"), **Overseas Redevelopment Company, LLC** (hereinafter referred to as "ORC"), and **Monroe County**, a political subdivision of the State of Florida (hereinafter referred to as "County"), pursuant to the terms and conditions herein and § 380.032(3), *Florida Statutes*.

WHEREAS, Monroe County, Florida includes within its boundaries all of the Florida Keys and is known as an Area of Critical State Concern, as designated under Sections 380.05, *Florida Statutes*, and Chapter 28-36, *F.A.C.*; and

WHEREAS, the DCA is the state land planning agency having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380, *Florida Statutes*, the Environmental Land and Water Management Act (the "Act"), which includes provisions relating to areas of critical state concern; and

WHEREAS, DCA is authorized by § 380.032(3), *Florida Statutes*, to enter into an agreement with any landowner, developer or other governmental agency as may be necessary to effectuate the provisions and purposes of the Act, or any related rule; and

WHEREAS, in March, 2005 ORC entered into a contract to purchase a parcel of real property located on Stock Island, Florida comprising approximately 3.56 acres, as is more fully described in Appendix "A", also known Overseas Trailer Park (the "Property"), pursuant to which contract ORC, as contract vendee, is entitled to seek and obtain government approvals for the development of the Property; and

WHEREAS, after acquiring the Property, ORC presented an application for an amendment to a conditional use to the County to convert sixty-three (63) mobile home sites to forty-nine (49) market rate housing units on the property; and

WHEREAS, ORC negotiated with the County the terms of an agreement to resolve vested rights and other development issues that were the subject of protracted discussions between the County and ORC; and

WHEREAS, the goal of the parties was to seek a means to preserve affordable housing by identifying a plan that would create workforce housing units and recognize certain remaining market rate units on the Property; and

WHEREAS, it is in the public interest and consistent with current County ordinances and planning initiatives that Overseas Trailer Park be developed as workforce housing, rather than market rate units; and

WHEREAS, it is in the public interest and consistent with County planning initiatives that private lands capable of supporting workforce housing developments be purchased and brought into public ownership when possible; and

WHEREAS, the County recognizes that to achieve this public purpose it is necessary to provide Rate of Growth Ordinance rights (ROGO units) as part of the purchase price incentive to private landowners in the position of ORC.

NOW, THEREFORE, in consideration of the mutual covenants and the terms and conditions set forth hereafter, the County, ORC and DCA agree as follows:

1. **Incorporation of Recitals.** All of the foregoing recitals are incorporated into this Agreement.

2. **Development Agreements.**

2.1. The parties agree that the Property that is subject of this agreement, based on the most accurate historical information available, has sixty-three (63) ROGO units allocated to the Property.

2.2. The parties agree that ORC currently has the lawful right to construct forty-nine (49) market rate units on the Property.

2.3. The parties agree that there presently are an additional fourteen (14) market rate ROGO units on the Property that may be transferred off site by ORC.

2.4. The County will purchase the Property from ORC pursuant to the following terms and conditions:

a. The County will pay to ORC the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in cash in exchange for the transfer of ORC's fee simple ownership in the Property.

b. The County will lease the Property back to ORC in a lease format approved by the County and ORC for a term of ninety-nine

(99) years for a rental rate of Ten Dollars (\$10.00) per year. As tenant, ORC shall assume all expenses and obligations of ownership of the Property. As set forth below, ORC will redevelop the Property into a workforce housing community, which ORC will operate and manage consistent with the County's workforce housing regulations, as amended from time to time, including oversight by the County Housing Authority.

c. The County will allocate eighteen (18) of its affordable ROGO units in its inventory to ORC for the redevelopment project, and ORC will provide thirty-one (31) of its ROGO units to the project. Said eighteen (18) County units and thirty-one (31) ORC units shall be used by ORC to redevelop the Property into a forty-nine (49) unit workforce housing community. The County may substitute thirty-one (31) of its affordable housing ROGO allocations for the 31 ORC units and in which event ORC will assign the 31 ORC market rate ROGO allocations to the County for its use. Thereafter, ORC shall own all forty-nine (49) units and shall be able to sell the same to third parties in accordance with the County's workforce housing guidelines. The parties agree that ORC shall have the greatest possible latitude under the workforce housing guidelines in its selling of units in the community, and shall be able to sell such units at the maximum prices permissible under the workforce housing guidelines, including but not limited to those prices chargeable to people in the "moderate" income classification.

d. The remaining thirty-two (32) market rate ROGO units retained by ORC may be sold by ORC upon such terms and conditions as it in its sole and absolute discretion deems appropriate, and such units may be transferred off the Property singly, in groups or all together to a receiver site or sites. ORC shall be entitled to transfer such units at such time as it has been issued a building permit for

the redevelopment of the Property as set forth above. Each of the thirty-two (32) ROGO units to be transferred off the Property is deemed to meet the transfer criteria established by County regulations and ordinances and shall be transferable as of right to a receiver site. The units transferred off may not be transferred beyond the Lower Keys District boundaries unless and until the nutrient reduction system is officially dispensed with as a result of official state action or judicial decree. The units being transferred off-site may not be transferred in a Tier 1 zoning district; or a special protection area if the construction of the units would require clearing of natural habitat; or if evaluated under ROGO the site would receive negative points under habitat protection, threatened or endangered species, or critical habitat.

e. The transfer of affordable units from one owner to another will be monitored by the County in a manner to be determined by the County from time to time.

f. Until such time as Monroe County shall adopt "workforce housing" regulations ORC shall comply in all respects with the definition of "affordable housing" in the Monroe County Code and shall additionally require each unit purchaser or adult occupant to be a member of the Monroe County workforce, i.e. to be gainfully employed, full time, in Monroe County at the time of purchase or occupancy and to remain so employed for not less than five years thereafter.

3. **Construction of the Agreement.** The parties hereto have entered into this Section 380.032 agreement in recognition of the unique circumstances applicable to the Property, and in consideration of the public benefits to be obtained by preserving workforce housing stock. Accordingly, this Section 380.032 Agreement should not be construed as establishing precedent or procedure for any other development application.

4. **General Provisions.** The County will not take any official action through its agents or employees which would contravene, interfere with or alter any provision in this agreement.

5. **Authorized Signatures.** The Board of County Commissioners of Monroe County, or its authorized designee, shall execute this Section 380.032 Agreement on behalf of the County following approval of this Agreement by the Board of County Commissioners. The Director of the Division of Community Planning, or his/her authorized designee, shall execute this Agreement on behalf of DCA. ORC shall execute this Agreement by its duly-authorized officer.

6. **Entirety of Agreement.** The County, DCA and ORC further agree that this Section 380.032 Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing and duly signed by the County, DCA and ORC.

7. **Duplicated Originals.** This Section 380.032 Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

8. **Enforcement.** In the event of a breach of this Section 380.032 Agreement, or failure to comply with any condition of it, the County, DCA and ORC may enforce this Agreement pursuant to §§ 380.05 and 380.11, *Florida Statutes*, or as otherwise provided by law.

9. **Scope of Authority.** This Section 380.032 Agreement affects the rights and obligations of the County, DCA and ORC as provided under the terms herein and Chapter 380, *Florida Statutes*. This Section 380.032 Agreement is not intended to influence or determine the authority or decisions of any other state or local government or agency in issuance of any other permits or approvals that might be required by state law or local ordinance for any development authorized by this Agreement except as otherwise provided herein.

10. **Effective Date.** This Agreement shall take effect upon signature of the last of the parties to sign this Agreement.

IN WITNESS WHEREOF, the parties by and through their respective undersigned duly authorized representatives have executed this Agreement on the dates and year below written.

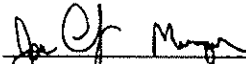
COUNTY OF MONROE

OVERSEAS REDEVELOPMENT
COMPANY, LLC


DCA



Mayor/Chairman



by: Joe Cleghorn, its
Manager



Director Division of
Community
Planning, DCA

JUL 19 2006

Date signed

7/21/06

Date signed

8/9/06

Date signed

(SEAL)
ATTORNEY DANNY L. KOLHAGE CLERK

BY 

DEPUTY CLERK

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:



SUZANNE A. HUTTON
COUNTY ATTORNEY

Date

7/27/06

FILED FOR RECORD
2006 AUG 14 PM 4:01
DANNY L. KOLHAGE
CLK, CIR. CT.
MONROE COUNTY, FLA.